

**CALENDAR ITEM
C06**

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04/05/16
PRC 3257.1
M.J. Columbus

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Norman A. Nagel and Rita Nagel, as Trustees, or any successor trustee of the Norman A. Nagel and Rita Nagel 1981 Living Trust under agreement dated October 26, 1981; and Clinton Charles Myers and Janelle Kay Myers, as Trustees of the Myers Family 2011 Trust dated March 17, 2011.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 4910 and 4900 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing joint-use pier, two boathouses, three boat hoists, two sundecks with stairs, and four mooring buoys.

LEASE TERM:

10 years, beginning February 1, 2016.

CONSIDERATION:

\$6,938 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they must remove the buoys.

Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or

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any other regulatory agency for the improvements authorized by the Commission.

The lease contains provisions stating that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck with stairs must be removed from the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

With the exception of the sundecks, the subject facilities are for the docking and mooring of boats. The sundecks are built on top of the existing boathouses. Recreational boating is a water-dependent use that is generally consistent with the common law public trust doctrine. The sundecks with stairs are not associated with traditional public trust uses. The California Legislature has identified private recreational boating facilities as an authorized use of public trust lands (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The pier is built on a flat and cobbled part of the shore, and built on pilings, meaning the public may navigate next to, and at certain water levels, under the pier. The sundecks are built onto the existing boathouses and do not expand the footprint of the pier. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

While new sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. However, the sundeck may not be expanded nor rebuilt if substantially destroyed.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for public trust consistent uses. Upon termination of the lease, the Lessee may be required to remove all improvements from State land.

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The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the use of public land. For all the reasons above, Commission staff believes the issuance of this lease will not substantially interfere with public trust needs at this location, at this time, and for the foreseeable term of the proposed lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On August 22, 2008, the Commission authorized a General Lease - Recreational Use to Norman A. Nagel and Rita Nagel, as Trustees, or any successor trustee of the Norman A. Nagel and Rita Nagel 1981 Living Trust under agreement dated October 26, 1981; and Clinton Myers and Janelle Myers. That lease expired on January 31, 2016. On March 22, 2011, ownership of the upland parcel, Assessor's Parcel Number (APN) 115-050-039, was deeded to Clinton Charles Myers and Janelle Kay Myers, as Trustees of the Myers Family 2011 Trust dated March 17, 2011. The Applicant is now applying for a General Lease – Recreational Use.
3. This action is consistent with Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways, and Strategy 1.1 to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
4. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and

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through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the public's public trust needs and values at this location, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Norman A. Nagel and Rita Nagel, as Trustees, or any successor trustee of the Norman A. Nagel and Rita Nagel 1981 Living Trust under agreement dated October 26, 1981; and Clinton Charles Myers and Janelle Kay Myers, as Trustees of the Myers Family 2011 Trust dated March 17, 2011, beginning February 1, 2016, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, two boathouses, three boat hoists, two sundecks with stairs, and four mooring buoys, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$6,938 with an annual Consumer Price Index adjustment; and liability insurance in the amount of \$1,000,000 per occurrence.

EXHIBIT A

PRC 3257.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 22 Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – JOINT-USE PIER WITH TWO BOATHOUSES

All those lands underlying an existing joint-use pier, two (2) boathouses, two (2) sundecks, two (2) stairs, three (3) boat hoists and two (2) catwalks adjacent to that Parcel described in that Grant Deed recorded July 15, 2008 as Document Number 2008-0057168 and that Parcel described in that Trust Transfer Deed recorded March 22, 2011 as Document Number 2011-0022683 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCELS 2, 3, 4 & 5 – FOUR BUOYS

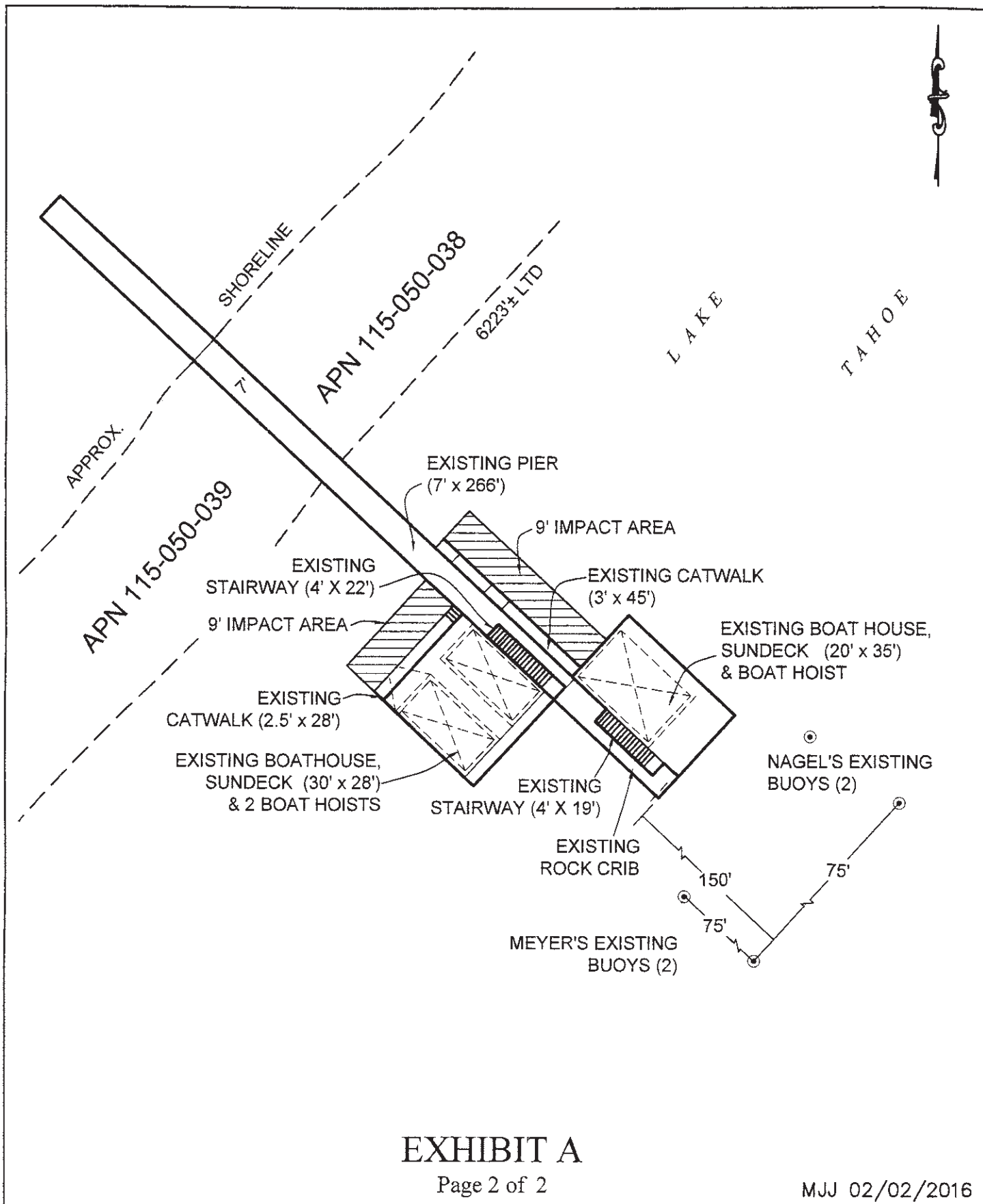
Four (4) circular parcels of land, being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to Parcels described in said Deeds.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared March 1, 2016 by the California State Lands Commission Boundary Unit.





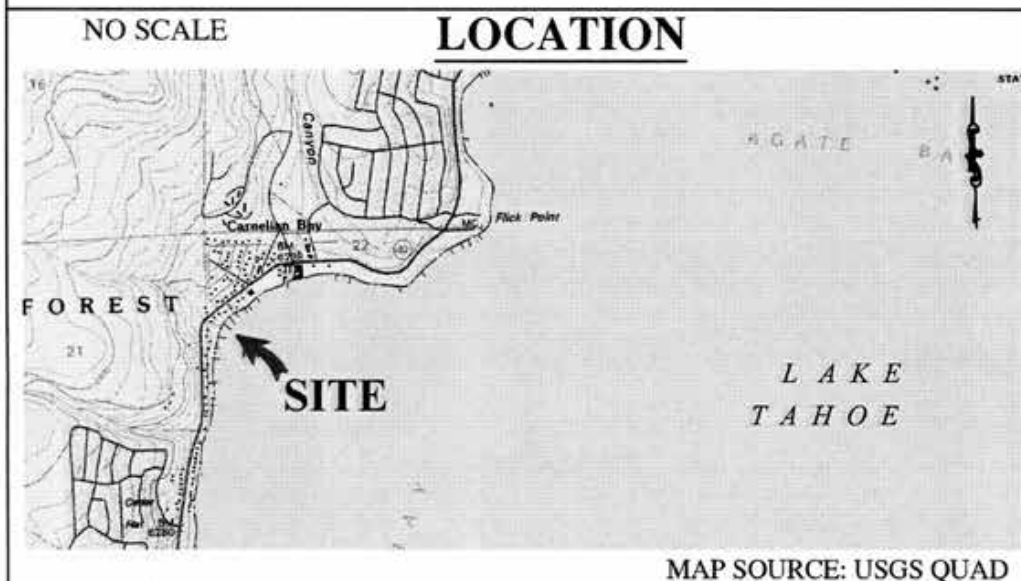
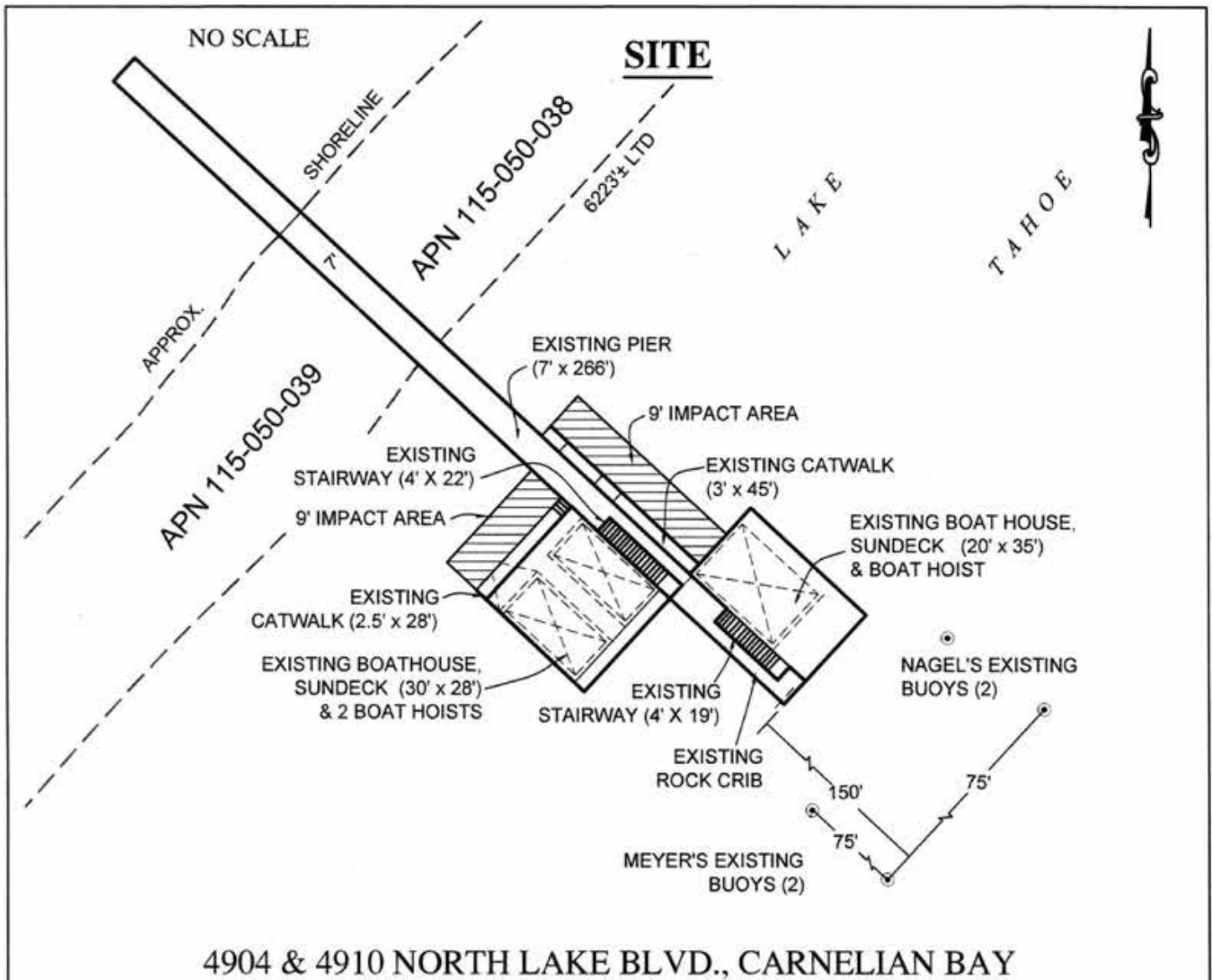


Exhibit B

PRC 3257.1

NAGEL & MEYERS

APN 115-050-038 & 039

GENERAL LEASE - RECREATIONAL USE

PLACER COUNTY

SITE

LAKE TAHOE

Placer Co.

El Dorado Co.

California

Nevada

MJJ 2/02/16

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.